

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review – Stream-	)	CC Docket No. 98-171
lined Contributor Reporting Requirements	)	
	)	
Telecommunications Services for Individuals	)	CC Docket No. 90-571
with Hearing and Speech Disabilities	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	

**REPLY COMMENTS OF BT NORTH AMERICA INC.**

BT North America Inc. (“BTNA”), by counsel, hereby submits its Reply Comments in the captioned proceedings.<sup>1/</sup>

The Coalition for Sustainable Universal Service (“Coalition”) is wrong when it calls the existing international *de minimis* exemption “arbitrary” and “inequitable and discriminatory.” <sup>2/</sup> To the contrary, the international exemption is necessary to avoid a situation that the Fifth Circuit deemed arbitrary, inequitable, and discriminatory, and the exemption will continue to be needed even if the Commission moves from a revenue-based contribution system to a connection-based

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<sup>1/</sup> *Federal-State Joint Board on Universal Service*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002).

<sup>2/</sup> Coalition for Sustainable Universal Service (“Coalition”) Comments at 34.

regime, since even in a connection-based system there remains a possibility that some carriers will “contribute more in universal service payments than they will generate from interstate service,” causing a “heavy inequity.” <sup>3/</sup> The Coalition correctly notes that competition in international telecommunications could be skewed in favor of “pure play” international telecommunications providers, who would pay no universal service contributions, in comparison to carriers that primarily provide international telecommunications but also provide some domestic telecommunications. <sup>4/</sup> But the 12% *de minimis* international exemption does not create that skew; it is designed to remedy that skew. And as BTNA showed in its initial comments, the international exemption will continue to be needed to remedy this problem in a connection-based system. <sup>5/</sup>

On the other hand, BTNA agrees with the Coalition’s legal analysis of the Commission’s authority to exempt from contribution obligations those carriers that do not provide “connections,” <sup>6/</sup> such as providers of prepaid calling cards, teleconferencing services, and (in many cases) transmission of video broadcasts.

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<sup>3/</sup> *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999) (“*TOPUC I*”).

<sup>4/</sup> Coalition Comments at 35.

<sup>5/</sup> BTNA compared a hypothetical “pure play” international carrier that provides 200 international DS3 private lines with a second carrier that provides 199 international private lines and one domestic interstate private line. BTNA Comments at 4-5. The existing international exemption prevents the second carrier from being treated dramatically, and unfairly, differently from the first simply due to providing a minimal amount of domestic traffic. It also precludes the strong possibility that the second carrier’s contribution obligations – under a per-line system – would exceed its domestic revenues.

<sup>6/</sup> Coalition Comments at 88-91.

These carriers' telecommunications activities are "*de minimis*" when considered from the perspective of a system in which "[i]nterstate connections [are used as] a different, but still reasonable metric of a carrier's 'telecommunications activities.'" <sup>7/</sup>

BTNA also agrees with the parties who argue that it would be unjust, unreasonably discriminatory, and unlawful for the Commission to impose disproportional contribution burdens on multi-line business consumers. <sup>8/</sup> The purpose of the universal service provisions of the Telecommunications Act of 1996 is to make the collection and distribution of universal service funds equitable and non-discriminatory, in part by eliminating implicit cross-subsidies. The courts have held that the Commission may not, through the guise of universal service policies, create *new* implicit subsidy mechanisms. <sup>9/</sup> Yet that is precisely the likely result of imposing different contribution obligations on otherwise identical telecommunications connections, based on the identity of the consumers who purchase them – creating a new implicit subsidy mechanism that would force multi-line business consumers to cross-subsidize residential users. This outcome would violate the Act.

Finally, BTNA disagrees with WorldCom's comment that the Commission need not make parallel changes to the structures of the contribution programs other than universal service – TRS, NANP, LNP, and regulatory fees. <sup>10/</sup>

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<sup>7/</sup> *Id.* at 89.

<sup>8/</sup> *See, e.g.,* Ad Hoc Telecommunications Users Committee Comments at 8-18; Coalition Comments at 65; State of Texas Comments at 3-4.

<sup>9/</sup> *Comsat Corp. v. FCC*, 250 F.3d 931, 939 (5<sup>th</sup> Cir. 2001); *TOPUC I*, 183 F.3d at 425.

<sup>10/</sup> WorldCom Comments at 15-16.

Rather, as demonstrated in BTNA's initial comments, it would be unnecessarily burdensome for carriers to collect and report both revenue data and connection data for purposes of programs that assess contributions in different ways. <sup>11/</sup> The public interest requires a uniform system for all contribution programs.

For the foregoing reasons, BTNA respectfully requests that the Commission adopt the policy recommendations discussed above and in BTNA's prior comments in these proceedings.

Respectfully submitted,

**BT NORTH AMERICA INC.**

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<sup>11/</sup> BTNA Comments at 11.